



Connecting all points of the Triangle

January 21, 2016

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CIN 160032

Yvette G. Taylor, Ph.D.
Regional Administrator
Federal Transit Administration, Region IV
230 Peachtree St., NW, Suite 1400
Atlanta, GA 30303

RE: MOA for Durham-Orange Light Rail Transit Project, Durham and Orange Counties, ER 12-0738

Dear Dr. Taylor:

Enclosed for your review and signature, please find the Memorandum of Agreement (MOA) for protection of Historic and Archaeological resources for the proposed Durham-Orange Light Rail Transit Project. Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations codified in *36 CFR Part 800*, the MOA addresses the identification, evaluation, and treatment of archaeological resources that may be affected by the undertaking and cannot be avoided.

The GoTriangle General Manager and the State Historic Preservation Officer have signed the agreement and are returning the MOA for your signature. GoTriangle understands that once the MOA is signed, a copy of the MOA will be provided for our files.

If there is any additional information that you may need, please contact me at 919-485-7558, or dcharters@gotriangle.org.

Regards,

A handwritten signature in black ink, appearing to read "David A. Charters, Jr." with a stylized flourish at the end.

David A. Charters, Jr., PE
Manager, Design & Engineering
GoTriangle (formerly Triangle Transit)

Enclosure: Memorandum of Agreement for the proposed Durham-Orange Light Rail Transit Project
Cc: Julia Carrie Walker, Environmental Protection Specialist, FTA Region IV
Stanley A. Mitchell, Environmental Protection Specialist, FTA Region IV

**MEMORANDUM OF AGREEMENT
BETWEEN THE
FEDERAL TRANSIT ADMINISTRATION,
RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY, AND
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE FOR THE
DURHAM-ORANGE LIGHT RAIL TRANSIT PROJECT**

THIS MEMORANDUM OF AGREEMENT (MOA) is made and entered into on the last date executed below, by and between the FEDERAL TRANSIT ADMINISTRATION (FTA), RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY d/b/a Triangle Transit d/b/a GoTriangle (Triangle Transit), and the NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE (SHPO) for the proposed Durham-Orange Light Rail Transit (D-O LRT) Project to establish the procedures by which FTA, Triangle Transit, and SHPO (collectively, the Parties) will work together to ensure the effective protection of historic and/or archaeological resources during the implementation and construction of the proposed D-O LRT Project.

WHEREAS, Triangle Transit is seeking grant funding from FTA for the construction of light rail, related rail stations, and a rail operations and maintenance facility, and FTA has determined that this proposed project is an undertaking pursuant to 36 C.F.R. Part 800; and

WHEREAS, the proposed D-O LRT Project consists of an approximately 17.1 mile double-track light rail transit line with seventeen (17) proposed stations and one (1) rail operations and maintenance facility that will greatly expand transit service in Durham and Orange counties within the State of North Carolina; and

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effects on historic properties of projects they carry out, approve, or fund. See 36 C.F.R. Part 800. While Section 106 does not mandate preservation, consultation takes place to ensure that preservation values are considered in federal agency planning and decisions; and

WHEREAS, FTA, in consultation with Triangle Transit and SHPO has defined the D-O LRT Project's area of potential effects (APE) for the purposes of the Section 106 analysis, as defined at 36 C.F.R. § 800.16(d), to encompass the geographic areas within which the D-O LRT Project may directly or indirectly cause alterations in the character or use of historic or archaeological resources, recognizing that the APE may require modification as more detailed engineering for the D-O LRT Project is developed; and

WHEREAS, FTA, in consultation with Triangle Transit and SHPO has identified certain archaeologically sensitive areas that may be affected by the D-O LRT Project primarily due to the proximity of the areas to the proposed construction activities, and therefore, may be subject to protection or ongoing evaluation pursuant to Section 106; and

WHEREAS, as FTA's grantee, Triangle Transit must comply with all Section 106 requirements for the D-O LRT Project pursuant to 36 C.F.R. Part 800. Therefore, implementation of all stipulations will be the responsibility of Triangle Transit with FTA providing oversight and approval of stipulation

completion. FTA will request that SHPO review all implementation plans and projects and FTA will coordinate with Triangle Transit to provide all necessary documentation to SHPO for its respective files; and

WHEREAS, FTA has made a reasonable and good faith effort to identify and contact by letter the appropriate Native American tribes and groups, including the Eastern Band of the Cherokee and the Catawba Indian Nation; and

WHEREAS, the Catawba Indian Nation responded to the FTA's request and will be notified in the event of the discovery of Native American artifacts and/or human remains but no consulted tribes named above have responded affirmatively to the FTA's request to be a consulting party;

NOW, THEREFORE, FTA, Triangle Transit, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

A. ARCHAEOLOGICAL RESOURCES

1. The Draft Environmental Impact Statement (DEIS) prepared pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., (NEPA) based in part on the document *Archaeological Background Information, Durham-Orange Light Rail Transit Project* produced by Triangle Transit in November 2014 (Report), identified five (5) areas that should be subjected to archaeological field investigations through a Phase I survey. These five (5) areas include: (i) Mason Farm Road (corridor between UNC and US 15/501 parallel to Mason Farm Road); (ii) Leigh Village park and ride and corridor between George King Road and Interstate 40; (iii) Farrington Road Rail Operations and Maintenance Facility; Gateway park and ride; and (v) the corridor between US 15/501 and the intersection of Erwin Road and NC Highway 751.

2. FTA will ensure that the following measures are carried out in connection with implementation of the D-O LRT Project for these five (5) archaeologically sensitive areas:

a. Identification of Archaeologically Sensitive Areas and Assessment of Potential Project Effects

1. A Phase I terrestrial archaeological survey (Survey) will be performed for the five (5) archaeologically sensitive areas defined above by either Triangle Transit or their contractor. All Surveys will be performed pursuant to accepted standards of SHPO. A report of the findings from the Survey will be produced pursuant to the 1988 *Guidelines for Preparation of Archaeological Survey Reports in North Carolina* (Survey Guidelines) as promulgated by the North Carolina Office of State Archaeology (OSA).
2. Should the Survey outlined in Stipulation I.A.1 identify historical and/or archaeological resources evaluated as potentially eligible for the National Register of Historic Places (NRHP), the FTA, in consultation with Triangle Transit

and SHPO, will devise and implement an appropriate testing work plan to determine the of NRHP-eligibility of any potentially eligible sites.

3. FTA will also consult with Triangle Transit and SHPO to determine an appropriate plan of action, if any, for addressing one (1) archaeological resource and two (2) potential archaeological resources previously identified as warranting Phase II testing to determine NRHP eligibility. These three (3) actual and/or potential resources, detailed in the Report, include: archaeological site 31DH655**, Potential Site 1, and Potential Site 3. Initial consultation between FTA, Triangle Transit, and SHPO in 2014 determined that these three (3) sites were identified and evaluated over ten (10) years ago, and therefore, the original recommendations may not be accurate for the resources' current conditions. Further, if it is determined no adverse effects will occur, testing of the resources may not be required. Therefore, FTA, Triangle Transit, and SHPO will need to consider the location, type, and extent of disturbances for the D-O LRT Project in conjunction with the reported locations and current conditions of the three (3) resources in order to evaluate any testing needs for them.

b. Adverse Effects Determination, Mitigation, and Data Recovery

1. If NRHP-eligible historic and/or archaeological resources are identified during the Survey and/or Phase II study outlined above, FTA will determine if there are any adverse effects to the resources. FTA will determine if preservation in place is possible for any affected eligible resources. If it is determined that preservation in place is deemed unlikely for the D-O LRT Project as track alignment and structure have no tolerance for movement, then FTA, in consultation with Triangle Transit and SHPO, will develop and implement a data recovery plan that is consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Fed. Reg. 44716) and the Advisory Council on Historic Preservation's (ACHP) handbook *Treatment of Archaeological Properties* (1980).
2. Any data recovery plan developed under this MOA will consist of: (1) the development of significant research issues to be investigated; (2) the phased recovery of resources; (3) the scientific investigation of the resources recovered in sufficient detail to address the identified research issues and test assumptions; (4) allowances for addressing unanticipated resources or site conditions; (5) a process for consultation with Triangle Transit and SHPO; and (6) a schedule of these proposed data recovery activities for each site.

c. Curation and Reporting

Within eighteen (18) months after the archaeological field work is complete, FTA, in consultation with Triangle Transit and SHPO, and in accordance with 36 C.F.R. Part 79,

will plan for the analysis and curation of material and records from any archaeological excavations associated with the D-O LRT Project. Triangle Transit will be responsible for the implementation of such a plan, and ensure that all final archaeological reports are responsive to the Survey Guidelines and any archaeological assemblages are prepared and curated pursuant to Archaeological Curation Standards and Guidelines as set forth by the OSA.

d. Unanticipated Discovery During Construction

An unanticipated discovery is one that occurs outside the five (5) archaeologically sensitive areas or outside the boundaries of archaeological resources identified within the five (5) archaeologically sensitive areas described in Paragraph A1. The procedures for the unanticipated discovery plan are set forth below.

1. Initiate Unanticipated Discovery Plan. Cultural Resources to be considered as an unanticipated discovery and that require reporting include, but are not limited to: a) any human remains, b) any features (pits, foundations), and c) any artifacts (individual objects, specimens or physical evidence of prehistoric or historic human activity).
2. Procedures to Follow in the Event of an Unanticipated Discovery.
 - (i) Triangle Transit will notify the Parties of an unanticipated discovery within forty-eight (48) hours of the discovery.
 - (ii) Triangle Transit will flag or fence off the archaeological discovery location and take measures to ensure site security. Any discovery made on a weekend will be protected until all appropriate Parties are notified of the discovery. Triangle Transit will not restart work in the area of the find until clearance has been granted by FTA, in consultation with the SHPO. Triangle Transit will indicate the location and date of the discovery on the D-O LRT Project plans. Triangle Transit will have an archaeologist undertake a site visit or otherwise coordinate an on-site archaeological consultation.
 - (iii) Triangle Transit will direct the archaeologist to begin a more detailed assessment of the find's significance and the potential effects of the D-O LRT Project to the find(s).
 - (iv) Triangle Transit will notify FTA and the SHPO of the find within 48 hours of discovery. The notification to FTA and SHPO will either: (i) explain why the archaeologist for Triangle Transit recommends that the find is not significant, or (ii) describe a proposed scope of work for evaluating the significance of the find and evaluating project effects. All work to evaluate significance of the find would be confined to the D-O LRT Project's area of effect. Prior to the

implementation of any scope of work, FTA will consult with Triangle Transit and SHPO.

3. If the find is determined to be significant, and continuing construction may damage more of the site, then Triangle Transit will work with FTA to determine appropriate recommendations regarding the proper measures for site treatment. These measures may include:
 - (i) Formal archaeological evaluation of the site;
 - (ii) Visits to the site by FTA, Triangle Transit, SHPO and/or other entities;
 - (iii) Preparation of a mitigation plan by the archaeologist for Triangle Transit for FTA approval and consultation with Triangle Transit and SHPO;
 - (iv) Implementation of the mitigation plan; and
 - (v) FTA, in consultation with the SHPO, will provide approval to resume construction following completion of the fieldwork component of the mitigation plan.
4. If the find is determined to be isolated or completely disturbed by prior construction activities, then Triangle Transit will consult with FTA, SHPO, and/or other entities as appropriate, and will request approval from FTA to resume construction, subject to any further mitigation that may be determined necessary.

e. Procedures to Follow In the Event of an Unanticipated Discovery of Human Remains

The Unmarked Human Burial and Human Skeletal Remains Protection Act, N.C.G.S. §§ 70-26 – 70-40, (Act) addresses discovery of unmarked human remains. Triangle Transit will adhere to all provisions of the Act as the D-O LRT Project moves forward. Should human remains be discovered as a result of construction related activities associated with the D-O LRT Project, “disturbance of the remains shall cease immediately and shall not resume without authorization for either the county medical examiner or the State Archaeologist,” under the provisions of N.C.G.S. §§ 70-30(c) or 70-30(d).

Within 48 hours, Triangle Transit will notify the Parties, local law enforcement, the medical examiner of the county in which the remains are encountered, and other appropriate entities of the find and cooperate with all agencies and/or entities as required.

If it is determined that intact internments are present and may be disturbed by continuing construction, Triangle Transit will consult with the next of kin or descendent community (if known). Triangle Transit will receive direction from FTA regarding additional measures to avoid or mitigate further damage. FTA will consult with Triangle Transit, SHPO, and other entities as appropriate. The avoidance or measures may include:

1. Formal archaeological evaluation of the site;
2. Visits to the site by FTA, SHPO, and other entities, as appropriate;
3. Preparation of a mitigation plan by the archaeologist for Triangle Transit, including procedures for avoidance or disinterment and reinterment, to be approved by FTA and in consultation with Triangle Transit, SHPO, and others as appropriate;
4. Implementation of the mitigation plan by Triangle Transit; and
5. Approval to resume construction following completion of the fieldwork component of the mitigation plan.

B. GENERAL TERMS

1. This MOA will expire if its terms are not carried out within ten (10) years from the last date executed below.
2. All terms and conditions of this MOA are dependent upon and subject to the allocation and availability of funds for the purposes set forth in this MOA. The MOA will immediately terminate if funds cease to be available, and Triangle Transit will immediately notify all Parties if funding becomes unavailable.
3. Each year following the execution of this MOA until it expires or is terminated, Triangle Transit will provide all Parties with a summary report detailing work undertaken pursuant to its terms. Such reports will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Triangle Transit's efforts to carry out the terms of this MOA.
4. Should any Party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FTA shall consult with such Party to resolve the objection. If the FTA determines that such objection cannot be resolved, the FTA will:
 - A. Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to the ACHP. The ACHP shall provide the FTA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FTA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Parties to the MOA, and provide them and the AHCP with a copy of such written response. The FTA will then proceed according to its final decision.
 - B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FTA shall prepare a written response that takes into

account any timely comments regarding the dispute from the Parties to the MOA, and provide them and the ACHP with a copy of such written response.

- C. The Parties' responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
5. If any Party determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other Parties to attempt to develop an amendment to this MOA. If within sixty (60) days an amendment cannot be reached, any Party may terminate the MOA upon written notification. Once the MOA is terminated, and prior to work continuing on the D-O LRT Project, the FTA will either (i) execute an MOA pursuant to 36 C.F.R. § 800.6 or (ii) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The FTA will notify the Parties as to the course of action it will pursue. The execution of this MOA and the implementation of its terms evidence that the FTA has taken into account the effects of the D-O LRT Project on historic properties and afforded the ACHP an opportunity to comment.
 6. Any changes, amendments, corrections, or additions to this MOA shall be in writing; shall be executed and approved by the same officials or their respective designee of the Parties who execute and approve the original MOA; shall be in accordance with applicable law; and shall become effective upon complete approval by all Parties.
 7. The Parties agree to resolve any disputes arising hereunder through good faith discussions and negotiations.
 8. Any notices, correspondence, or other submissions required by this MOA shall be in writing and shall be sent by electronic mail or by United States mail, First Class postage pre-paid to ensure delivery to the Parties, respectively, at the following addresses or email addresses, unless a Party has been notified in writing by the other of a change of address or preferred methodology of delivery and receipt:

To FTA:

Yvette G. Taylor, Ph.D.
Administrator, Region IV
Federal Transit Administration
230 Peachtree NW, Suite 1400
Atlanta, Georgia 30303
Telephone: 404.865.5600
Facsimile: 404.865.5606
Email: Yvette.Taylor@dot.gov

To Triangle Transit:

Jeffrey G. Mann
General Manager, Triangle Transit
P.O. Box 13787
Research Triangle Park, NC 27709
Telephone: 919.485.7510

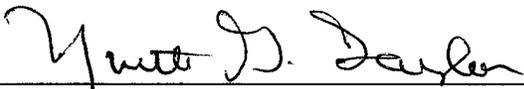
Facsimile: 919.485.7441
Email: jmann@gotriangle.org

To SHPO:

Kevin Cherry, Ph.D.
State Historic Preservation Officer
Attn: SHPO-ER
4610 Mail Service Center
Raleigh, NC 27699-4610
Telephone: 919-807-7279
Email: kevin.cherry@ncdcr.gov

9. This MOA shall be construed to promote the purposes of the statutes and regulations of the United States and the State of North Carolina, and the objectives of this MOA, resolving any ambiguities and questions of the validity of the of specific provisions so as to give maximum effect to the values and other objectives sought to be protected herein.
10. Each Party acknowledges that the individual executing the MOA on behalf of the respective Party is authorized to execute the document and to bind the Party to the terms contained herein.
11. A copy, email copy, or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of this MOA as binding as an original, and the Parties agree that this MOA can be executed in counterparts, as duplicate originals, with email or facsimile signatures sufficient to evidence an agreement to be bound by the terms of this MOA.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Agreement as of the last written date below:



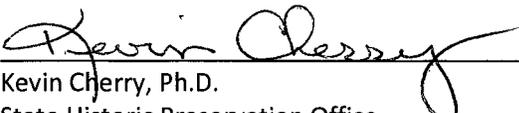
Yvette G. Taylor, Ph.D.
Administrator, Region IV
Federal Transit Administration

2-2-16
Date



Jeffrey G. Mann
General Manager
Triangle Transit

1/21/2016
Date



Kevin Cherry, Ph.D.
State Historic Preservation Office

1/11/2016
Date